Supreme Court of the United States

OCTOBER TERM—1955

No. 942

JOHN N. LENZ,
Petitioner,
vs.
ALBERT E. COBO,
Mayor of the City of Detroit,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I.

STATEMENT OF THE CASE

Petitioner, an employee of the City of Detroit, was served with notice of discharge on November 14, 1949. On November 28, 1949 and December 12, 1949 review of this discharge was had by hearings held in accordance with provisions of the City of Detroit charter before the Detroit Civil Service Commission. On January 27, 1950

further review of the discharge was had under the requirements of the Veteran's Preference Act of the State of Michigan (Act 205, Public Acts of 1897, as amended, being Section 35.402 of the Compiled Laws of 1948) before the Mayor of the City of Detroit, the respondent herein. Each of these tribunals upheld the discharge, the Civil Service Commission by order dated December 14, 1949 and the Mayor by order dated February 6, 1950. Petitioner thereafter sought no further review of the Civil Service Commission hearing, but did on February 5, 1951 apply for a Writ of Mandamus to set aside the decision of the Mayor. He charged that the hearing was not the "full hearing" as set forth in the Veteran's Preference Act. The Michigan Supreme Court held Mandamus to be an improper method of review by a decision rendered December 29, 1953 (*Lenz v. Cobo,* 338 Mich. 383). Thereafter and on September 27, 1954 petitioner filed the proper application for review, namely, a Writ of Certiorari. Respondent defended among other grounds on the defense of laches. The Supreme Court of Michigan sustained this defense and rendered its decision refusing consideration of the validity of the discharge because of Petitioner's laches. This decision was rendered December 1st, 1955 (*Lenz v. Cobo,* 343 Mich. 599). A petition for rehearing was denied March 1, 1956.

II.

ARGUMENT

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POINT A

NO FEDERAL QUESTION IS INVOLVED

The decision of the Supreme Court of Michigan, which petitioner here seeks to review, rests on a point of local or general law, namely the defense of laches. The majority opinion confines its discussion solely to this question of local practice. It does not pass upon, decide or even mention a Federal question. Petitioner's application for re-hearing in the Michigan Supreme Court, which was denied on March 1, 1956, discussed only the validity of the law of laches as announced in the Court's earlier opinion. Thus, at no point in the litigation was a decision made by the Michigan Court upon a Federal question.

Where, as here, a Federal question is not the basis of the State Supreme Court's decision, the Supreme Court of the United States has refused to issue its Writs of Certiorari. We cite the case of *Preston v. the City of Chicago,* 226 U. S. 447, 57 L. Ed. 293, 33 Supreme Court Rep. 177, wherein a police officer asked for a Writ of Mandamus to restore him to his employment with the City claiming that he could not be fired from his Civil Service position without a hearing. This Court held that it was bound by the State Supreme Court's decision that not only was the employee not under Civil Service protection, but also that he had delayed too long in questioning the validity of the discharge. At page 450 it is said:

> "Even, however, if we were at liberty to disregard the action of the state court and attribute

> to plaintiff in error the status claimed by him, as in addition the Court below held that the right to relief prayed for was in any event barred by long delay and laches, and this would be sufficient to prevent us from reviewing the alleged Federal question. *Moran v. Horsky,* 178 U. S. 205-207, 44 L. Ed. 1038-39, 20 Supreme Ct. Rep. 856."

To like effect *Wood v. Chesborough,* 228 U. S. 672, 57 L. Ed. 1018, 33 Supreme Ct. Rep. 706. *Edelman v. California,* 344 U. S. 357, 97 L. Ed. 387, 73 Supreme Court Rep. 293; *Missouri K. & T. R. Co. v. Sealey,* 248 U. S. 363, 63 L. Ed. 296, 39 Supreme Ct. Rep. 97; *Moran v. Hossky,* 178 U. S. 205, 44 L. Ed. 1039, 20 Supreme Court Rep. 856; *Seneca Nation of Indians v. Cristy,* 162 U. S. 283, 40 L. Ed. 970, 16 Supreme Court Rep. 828, *Johnson v. Risk,* 137 U. S. 300, 34 L. Ed. 683, 11 Supreme Court Rep. 111.

POINT B

NO FEDERAL QUESTION OF SUBSTANCE NOT HERETOFORE DETERMINED BY THIS COURT WAS EVER RAISED IN THIS CASE

The claimed violation of "due process" stems from the conduct of a "full hearing" required by the Michigan Veteran's Preference Act. The Supreme Court of the United States has on many occasions enumerated the requisites of a "full hearing". In this case there was no disposition to attack the principles of law thus announced. Thus, even if the Michigan court had passed on the merits of the hearing (and it did not so do) there would in this case be no new principle of law or federal question of substance not heretofore determined by the court.

POINT C

THE DECISION OF THE MICHIGAN SUPREME COURT IS SUPPORTED BY DECISIONS OF THE UNITED STATES SUPREME COURT

The Supreme Court of the United States subscribes to the law enunciated by the Michigan Supreme Court, that it is unnecessary to consider whether or not a removal from office or a discharge from employment is technically justified if the petitioner by his own laches has forfeited the right to have the action reviewed. See *U. S. v. Lane,* 249 U. S. 367, 63 L. Ed. 650, 39 Supreme Court Rep. 293. Also *Nicholas v. U. S.,* 257 U. S. 71, 66 L. Ed. 133, 42 Supreme Court Rep. 7; *Morris v. U. S.,* 257 U. S. 77, 66 L. Ed. 136, 42 Supreme Court Rep. 9.

We insert the above perhaps extraneous material since the issuance of a Writ of Certiorari is a matter of discretion, and under the announced rules of this court (Rule 19) the writ will be granted only where there are special and important reasons therefor. The rule of the Michigan Supreme Court and its decision on the law being in accord with generally accepted practice cannot be held to set forth any reason for a review even if a Federal question was involved.

POINT D

THE PETITIONER FOR WRIT OF CERTIORARI DOES NOT COMPLY WITH RULE 23 OF THE SUPREME COURT RULES

The rules of the Supreme Court adopted April 12, 1954, as amended October 11, 1955, set up a definite format for a petition for Writ of Certiorari and require a petitioner to state certain facts and set forth certain

points in the history of the litigation and pleadings therein. Petitioner has failed to follow the rule. We make mention of this in view of the statement in Rule 23 that such failure will be considered a "sufficient reason for denying his petition."

CONCLUSION

It is therefore respectfully submitted that this case is not a proper one for review by Certiorari in this Court and that the petition for a Writ of Certiorari should be denied.

PAUL T. DWYER,
Corporation Counsel,
HELEN MILLER SMITH,
G. EDWIN SLATER,
Assistants Corporation Counsel.

Dated: May 18, 1956.